

1979 WL 42786 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1979

\*1 J. Harold Mayer, Jr., Esquire  
Post Office Box 1132  
117 North Lucas Street  
Walterboro, South Carolina 29488

Dear Mr. Mayer:

You have recently asked the opinion of this Office as to when the current term of office of Magistrate W. F. Givens of Colleton County will expire.

Upon reviewing certain records, I have compiled the following chronology with regard to Magistrate Givens' recent appointments:

A. March 21, 1967—Appointment by Governor for a term as 'provided by law.'

B. January 21, 1975—Appointment by Governor Edwards to a new term to expire March 21, 1977. [Confirmed by Senate on January 15, 1975] [Emphasis Added]

C. July 29, 1976—Appointment by Governor Edwards to a new term as 'provided by law.' [Confirmed by Senate on July 22, 1976]

The sources of this chronology are the letters of appointment from the Office of the Governor to the Secretary of State (see enclosures), the book for the indexing of the appointments and commissions of magistrates in the Office of the Secretary of State, and the Senate Journal.

Section 43-1 of the Code of Laws of South Carolina, 1962, [now [Section 22-1-10 of the 1976 Code](#)] provides that magistrates 'shall hold their office for the term of two years and until their successors are appointed and qualified.'<sup>1</sup> The rule where the term of an appointed office is for a period of time fixed by statute with no prescribed dates is that the term commences on the date of appointment<sup>2</sup> and that the period cannot be extended, shortened or varied by the appointing authority.<sup>3</sup> Furthermore, where the incumbent succeeds himself, the terms are to be treated as separate and distinct.<sup>4</sup>

It should be noted that Section 43-1's provision for holding-over until a successor is appointed and qualified is as much a part of the specific term of the office of magistrate as is the two year provision. Because the provision for holding-over is a part of the specific term, its utilization would not affect the length of a successor's term.<sup>5</sup>

Applying this legal authority to the chronology herein, it would appear that the two year provision as to Magistrate Givens' March 21, 1967 appointment would have expired prior to his next appointment and qualification of his successor. As a result of the appointment on January 21, 1975, Magistrate Givens, as the actual successor to his prior term, would be entitled to a term of two years from the date of appointment, or to January 20, 1977, and until the appointment and qualification of his successor. The Governor reciting that the term of the January 21, 1975 appointment expired on March 21, 1977 [a period in excess of two years], could not alter the term of office as provided by the construction and application of Section 43-1. Thus, when he was appointed on July 29, 1976 to succeed himself, the appointment, which was prior to the expiration of the existing two year

term, had to be for a term to commence on January 21, 1977, and to expire on January 20, 1979, and upon the appointment and qualification of his successor.

\*2 In 1977 the General Assembly passed Act Number 117 (R. 186), which can be found at page 216 of the 1977 Acts and Joint Resolutions. This Act now provides the magistrates of Colleton County with terms of four years and would apply to the successor to Magistrate Givens' current term.

Based on the foregoing reasons and information, it is the opinion of this Office that the present term of Magistrate W. F. Givens of Colleton County would expire on January 20, 1979, and upon the appointment and qualification of his successor.

Sincerely yours,

James M. Holly  
State Attorney

Footnotes

- 1 This language was previously contained in [Article V, § 21 of the Constitution of the State of South Carolina](#), Code of Laws of South Carolina, 1952, but was omitted from the present [Article V, § 23](#), Code of Laws of South Carolina, 1976.
- 2 [Verner v. Seibels](#), 60 S.C. 572, 3. S.E. 274 (1895); 67 %c.j.s., o/fficers, §§ 45, 46.
- 3 [State ex rel. Coleman v. Lewis](#), 181 S.C. 10, 186 S.E. 625 (1936); [State v. Bowden](#), 92 S.C. 393, 75 S.E. 866 (1912); [C.J.S., supra](#), § 44(c).
- 4 [C.J.S., supra](#), § 46.
- 5 [State v. Bowden, supra](#); [Heyward v. Long](#), 178 S.C. 351, 183 S.E. 145 (1935).

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